



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,888	11/13/2003	Prabodh P. Parekh	IFF-71	7765
48/861	7590	04/07/2010		
INTERNATIONAL FLAVORS & FRAGRANCES INC. 521 WEST 57TH ST NEW YORK, NY 10019				
EXAMINER				
GULLEDGE, BRIAN M				
ART UNIT		PAPER NUMBER		
1612				
MAIL DATE		DELIVERY MODE		
04/07/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/706,888	Applicant(s) PAREKH ET AL.
Examiner Brian Gulleddge	Art Unit 1612

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1,3-9,11-16 and 18-21.

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612

/Brian Gulleddge/
Examiner, Art Unit 1612

Continuation of 5. Applicant's reply has overcome the following rejection(s): the rejection of claims 1, 11-16, and 18-21 over O'Connor in view of Triplett et al., which is now withdrawn in view of the claim amendments.

Continuation of 11. does NOT place the application in condition for allowance because: the arguments are not found persuasive by the Examiner.

The Applicant argues that the rejection over O'Conner in view of Rohe et al. is not proper. Applicant states that after reviewing the teachings of Rohe et al., one skilled in the art would recognize that an improved deodorant composition cannot be obtained through routine optimization. The Applicant further states that the claimed invention is directed to a malodor-counteracting composition that possesses unexpectedly superior effects compared to similar compositions, and that neither Rohe et al. or O'Connor recognize the criticality of the types and concentrations of the malodor counteractants claimed.

The Examiner is not persuaded by these arguments. The Applicant refers to the data presented in the previously filed declaration (filed under 37 CFR 1.131) to support the conclusion that the claimed composition possesses unexpectedly superior effects compared to similar compositions. However, the Applicant has not discussed specifically how the data presented in the declaration supports this conclusion. And Applicant has the burden of explaining the data in any declaration that is proffered as evidence of non-obviousness. See MPEP 716.02(C)(II). In the interest of compact prosecution, an evaluation of Exhibit A by the Examiner does not appear to support the stated conclusion. Applicant states that Exhibit A demonstrates the unexpected superior effect when combining zinc ricinoleate with monocyclic materials, as compared with other zinc salts. However, Exhibit A does not appear to contain any results, but rather only discloses the preparation of some formulations, none of which contain zinc ricinoleate. Thus, it is not clear how this data would support the conclusion of demonstrated unexpected malodor-counteracting effects, as no data measuring such an effect is even presented.